EDITOR'S NOTE

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ORIGINAL

NO. 85-5542

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ALVIN BERNARD FORD, or Connie Ford,
individually, and as next friend
on behalf of ALVIN BERNARD FORD,

Petitioner,

v.

LOUIE L. WAINWRIGHT, Secretary,
Department of Corrections,

Respondent.

RESPONDENT'S APPENDIX

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Counsel for Respondent

INDEX

THE COURT: Mr. Burr.

MR. BURR: Thank you Judge.

Your Honor, because of the separateness and complexity of some of the issues we have divided our argument among the three of us and at the appropriate time we will be switching if that is okay with Your Honor.

THE COURT: That's fine with me.

How long do you anticipate?

MR. BURR: We have tried to gear our total argument to something in the nature of 35 to 45 minutes.

THE COURT: You don't get that much time in front of the Court of Appeals.

MR. BURR: We will try to do it in 30 minutes. We are conscious of the time, Your Honor, and we will be addressing only the issues which we think have to be addressed.

THE COURT: Very well.

Please proceed.

MR. BURR: Your Honor, I would like to address, first of all, the competency issue and the facts of competency and the abuse of the writ question related to competency because those two go hand in hand; and certainly abuse of the writ is a special issue that we have to get over before there is anything else to talk about with respect to the competency issue. So I will limit my opening

remarks to what we submit is the right of Alvin Bernard Ford not to be executed when he is incompetent.

THE COURT: Well why are we arguing about that? Isn't the law fairly settled that executions don't take place if someone is incompetent?

MR. BURR: We submit that it is.

THE COURT: Why don't you address yourself to something that might be in issue?

MR. BURR: Well I think abuse of the writ is in issue. It certainly is an issue that the State has raised.

THE COURT: So you are addressing the question not on whether or not an incompetent person can be executed but whether or not there's abuse of this writ.

MR. BURR: That is correct.

THE COURT: Very well.

Please proceed.

MR. BURR: As I said the facts of competency and the question of abuse are intertwined.

The most important thing to note about abuse of the writ from our perspective and I think from the Court's perspective is that Alvin Ford did not become incompetent in the estimate of Counsel and observers of Mr. Ford until October of 1983 --

THE COURT: Hasn't the State contended differently?

MR. BURR: The State does contend differently and

to the extent that it rests on a different interpretation of facts I think the facts would have to be resolved in a hearing; but I don't think that the facts which genuinely go to any issue arose are in dispute because I don't think the State has been able to put them in dispute.

THE COURT: Well that psychiatrist testified before me nearly three years ago.

MR. BURR: That's right; but he said nothing about competency. His testimony was solely related to whether at the time of the incident Mr. Ford was laboring under any extreme mental or emotional disturbance, and he postulated that he was. At that point in time we made no claim about his current competency. There was no claim made about his competency at trial. There was no claim ever made about Alvin Ford's competency.

THE COURT: No. But could you have.

MR. BURR: In my estimation --

THE COURT: In December of 1981 when I had a hearing in this matter, evidentiary hearing.

MR. BURR: Absolutely not. I had no reason on earth to believe Alvin Ford was incompetent. He could speak with me about the issues in the case and explained what went on in the incident without any degree of difficulty at all.

THE COURT: But you were not his Counsel then, were you?

MR. BURR: I became his Counsel in the course of that proceeding and had the opportunity while he was in Fort Lauderdale for that proceeding to spend a good deal of time with him. There was no question in my mind of competency.

THE COURT: Wait a minute. Let's go into that a little bit.

You became his Counsel during the course of that proceeding?

MR. BURR: I appeared with Mr. Wollan from Tallahassee.

The Friday evening when we first appeared before Your Honor, Mr. Wollan was the only Counsel and at that point shortly after the proceeding started that Friday night, Your Honor admitted me to assist in representation of Mr. Ford.

THE COURT: When did your co-Counsel leave?

MR. BURR: He is still co-Counsel.

THE COURT: He's not here.

MR. BURR: He's not here. Since that day, since that time, my circumstances have changed. I have become a member of the Public Defender's Office for this State Judicial Circuit and that office has taken over the representation of Mr. Ford along with Mr. Wollan.

THE COURT: Very well.

Please proceed.

MR. BURR: From December of 1981 on, there began

to be some deterioration of Mr. Ford. The deterioration was hardly noticeable at first. In late December, early January, he began talking about his ability to communicate with the staff of the radio station in Jacksonville. Seemed quirky but who knew what that meant. Sometime later, in late February of 1982, Mr. Ford began what became a genuine obsession with the Ku Klux Klan. Mr. Ford became convinced that in late February '82, that a Ku Klux Klan had burned a house in Jacksonville where a black family had been killed and he attempted to communicate that message to a number of people through letters. He says that he talked with the staff of the radio station about his insight. He wrote one very, very long letter, which is in the habeas petition, explaining how he got the insight about the Ku Klux Klan's role in that arson.

Again, we knew about that. We got copies of the letters that he wrote. But there was at that point nothing to suggest that whatever was happening with Mr. Ford was intertwined with his understanding of his case.

He continued. Several months later in 1982 he began to think that the Ku Klux Klan had members serving as correctional officers at Florida State Prison. He thought that these officers were put there to harass him and to make him commit suicide. He believed that these officers were holding people hostage and there is what he calls a

"pipe alley a tunnel behind his cell at Florida State Prison where he thought hostages were being held. He describes in his letters the torture of the hostages and torture of himself emotionally again by what was going on. Again, strange stuff. Certainly an indication that he might be becoming psychotic. But when we visited with Mr. Ford he was able to talk with us about his case, he had an understanding where the case was in the Courts and he seemed to be becoming more concerned about what he called the hostage crisis than about anything else. But we were still able to communicate with him.

That proceeded through 1982 pretty much in that fashion with the delusions growing in scope and with more people being brought into the delusions; the number of hostages that he thought were being held increased. He began writing more impassioned letters to people that he thought had the power to help him.

THE COURT: What did you do about that?

MR. BURR: Well we talked, we tried to see Mr. Ford as often as we could, and we engaged the services of --

THE COURT: "We"? "We"?

MR. BURR: "We," meaning Counsel for Mr. Ford.

At that point in the fall of 1982 I was in West Palm Beach and my colleagues in the Public Defender's Office and I attempted to counsel with Mr. Ford. We also obtained

the services of a psychiatrist, Doctor Jamal Amin who testified before, has been seeing Mr. Ford all along and was able to see Mr. Ford through about August of 1982 and at that point Mr. Ford began to think that Doctor Amin was one of his persecutors, began to think that he was in conspiracy with the Ku Klux Klan to hold hostages and drive him crazy so he refused to see Doctor Amin in about August of '82. Doctor Amin continued consulting with us to help us in our dealings with Mr. Ford to try to bring some sense of reality to him. But by January of 1983 it was clear that we needed another psychiatrist to try to get in to see Mr. Ford.

At that point we asked for the assistance of a psychiatrist from Washington D.C. named Harold Kaufman, and from that point through the present Doctor Kaufman has consulted with us and has seen Mr. Ford on a couple of occasions. He has also reviewed hours of taped interviews with Mr. Ford.

THE COURT: Why would you go to Washington D.C. for a psychiatrist?

MR. BURR: Well, we were looking --

THE COURT: Is he one who was going to say what you wanted him to say?

MR. BURR: We had no reason to know what he would say.

THE COURT: I mean some psychiatrists have that

reputation both ways.

MR. BURR: Why sure. I did not know anything about Doctor Kaufman's reputation except that he was, had been for a number of years a consultant with the D.C. Court of Appeals, the D.C. Circuit Court of Appeals on psychiatric issues. He was also himself a lawyer and in our situation that was important because in late 1982 Mr. Ford began to suggest that he wanted to drop his appeals in his case. We at that point thought that he might be not competent to make an intelligent choice about dropping his appeals and that in fact had reason to believe that he had reason to do that as a way of ending the hostage crisis. So we got Doctor Kaufman's assistance for that reason initially. We knew we might be in a position of questioning Mr. Ford's ability to drop his appeals because he was making, he was saying those things at that point. So we turned to a psychiatrist who knew forensic psychiatry and the law and in our situation we thought that would be very helpful and he came well recommended by virtue of his consultation with the D.C. Circuit.

Through 1983 Mr. Ford's delusional system continued to change somewhat. The hostage crisis theme was still there but he began to develop other delusions as well and I believe in about April of 1983 or May Mr. Ford indicated that he had joined the Ku Klux Klan and not too

long after that he started writing in his letters that he was ending the hostage crisis, that he himself had brought a number of the perpetrators into the Courts, had appointed new justices of the Florida Supreme Court and there was a sentence that within his delusional world he had gained some resolution of what he had called the hostage crisis. Even at that point at the times that Mr. Ford would come out to visit, and he frequently would not come out to see us when we went to see him at the prison, we had no reason to believe that he thought that he couldn't be executed or that he had no understanding of why he was on Death Row; and for us that was the critical factor that we were looking at. We were at a point in his case where consultation with him about the issues in his case was not necessary because the issues were proceeding through the Courts in a fairly regular manner and there were legal decisions to be made but the choice of issues to litigate had been made long before.

THE COURT: Why would you just watch all this as you have described then, and do nothing?

MR. BURR: Your Honor, we did not do nothing. We retained the services of psychiatrists --

THE COURT: Why didn't you file something in the Courts?

MR. BURR: I didn't -- I had no reason to file anything because I had no reason to think there was a legal

claim related to his state. This was --

THE COURT: Why?

MR. BURR: Pardon me?

THE COURT: Why would they tell us he was fine and dandy?

MR. BURR: No. Both Doctor Amin --

THE COURT: What were they telling you then?

MR. BURR: Doctor Amin and Doctor Kaufman were saying to us they thought Mr. Ford was psychotic but his psychosis at that point focused on nothing to do with this case, had nothing to do with his ability as far as he could tell to understand his case. He seemed in our conversations with him to be aware that he was on Death Row in Florida for the murder of Dimitri Walter Ilyankoff and that he was under sentence of death and at that point in time that much orientation to reality was all that the law required. We had no basis for a claim.

I have to stress that our contact with Mr. Ford, though we attempted to have a good deal of contact, was not as frequent as we would have liked. We went to the prison to see him quite often and he would not come out and the prison's policy is not to bring somebody out that doesn't want to see their lawyer. We questioned a good deal of the prison staff about whether he was being treated. The prison's medical staff took the position that there was

nothing wrong with Mr. Ford. So we were caught in a position of not being able to get him any treatment for what our psychiatrists thought was a serious illness because the prison wouldn't treat him. We were in a position --

THE COURT: But you didn't file any suit to compel this?

MR. BURR: I did not file a right to treatment suit, no.

THE COURT: How come?

MR. BURR: At that point --

THE COURT: You think you just wait until you lose all the appeals and you got in a situation like this, then you would bring it up?

MR. BURR: No, Your Honor. I had no reason to believe at that point that his illness would invade his ability to understand his sentence of death and why he got it. I had absolutely no reason to believe that. Certainly looking back on it I can see that that would have been something to look for and in fact, we did look for.

The first indication, the very first indication that we had that Mr. Ford's illness crept into his ability to understand his sentence of death was in October of 1983. In about the middle of October Mr. Ford came out to see a minister from Nashville who had been corresponding with him for a number of years and had seen him occasionally, I was

with the minister, and at that point was the very first time that I had any knowledge of Mr. Ford thinking that he was no longer on Death Row. At that point in time for the first time I had heard he began talking about the case of Ford versus State as he calls it. And he explained that Ford versus State had overturned the current death penalty statute in Florida, had required that the death sentence be imposed by panels of twelve judges, and that he was no longer under sentence of death. In fact he was free to leave the prison but that he had decided that he would stay. At that point in time --

THE COURT: October, when, '83?

MR. BURR: October the 14th, '83, I believe was the exact date. October of '83. Within a week thereafter we did something. We invoked the statutory procedure in Florida, Section 922.07 for the Governor to inquire into his competency to be executed. That was the very first time that we had any knowledge of his underlying psychotic processes invading his ability to understand the nature and effect of the death penalty.

At that point in time in the law we were not certain whether the administrative remedy under 922.07 was something that we had to follow in order to adopt our remedies before moving into Federal Court or whether we could move into Federal Court immediately. We determined, on the basis

of what we understood the law to be then --

THE COURT: Go ahead.

MR. BURR: We determined, "we," meaning I and my colleagues at the Public Defender's Office determined that the safest course was to proceed through the administrative remedy first prior to moving into Court so that there would be no question about exhausting all available State remedies. We did that. We invoked the procedure. Governor Graham appointed three psychiatrists to go evaluate Mr. Ford. We spoke and communicated with those psychiatrists in advance. We were present at their evaluation of Mr. Ford. We were provided their reports thereafter. And we filed a written response to their reports. Interestingly enough though, during the entire process, the Governor's office, when I would make inquiries of the Governor's office as to when they would like something from me or whether I would have the opportunity to submit input, the Governor's Office took the consistent position that we could give them whatever we wanted to but they weren't sure whether they would consider it or not. We did have the opportunity in November after we had invoked the procedure, but before the Governor's psychiatrists saw Mr. Ford, we had the opportunity for Mr. Ford to see Doctor Kaufman and Doctor Kaufman prepared a report which we provided to the Governor and to the psychiatrists that he appointed. We, I believe, submitted

to the Governor in writing, again not knowing whether it would be even read or not. At the end of February, 1st of March of 1984, and about a month later -- I'm sorry, two months later on April the 30th, Governor Graham answered the question posed by 922.07 by signing the death warrant which represents his conclusion of that proceeding.

At that point we knew that we needed to move into Court and we moved into Court as quickly as we were able. The circumstance that intervened between April 30th and the middle of May was our representation of another client, James Adams, who was ultimately executed and for whose case our entire capital staff was working on that case.

So that's the sequence of events. If there is any questions I submit about the factual representation that I make, that I have made in this argument, seems to me the only proper way to resolve that is for me to be sworn as a witness and questioned and to answer under oath because it is a factual question and I, as the person in this office who has had the ongoing contact with Mr. Ford and the person that is uniquely possessed of the knowledge upon which our office acted or should have acted on behalf of Mr. Ford.

With that as the factual background, the question of abuse of the writ comes into this. Abuse of the writ, as the Court knows, applies to a successive petition which raises an issue that could have been raised in the first

petition but was not. If there is such a situation, abuse of the writ would be found. The law is very clear on that and well settled. The law is equally well settled that if there is no factual basis to raise a claim there can be no abuse of the writ if the factual basis arises after the last proceedings and that is precisely where we are here. The factual basis was not available before October of 1983 and at that point in time the case had left the Court, had gone through the U.S. Court of Appeals and had had certiorari denied in the U.S. Supreme Court. There was a limited remand pending between October and March of 1984 limited to a single narrow question which the Court has already now disposed of. We did not think we had any opportunity to supplement that proceeding because it was the mandate that had issued had limited the remand to the single issue under Barclay.

So with that analysis, we submit there is no question of abuse of the writ. Claims could not have been raised, if the facts which we have alleged in support of our claim are true could not have been raised. The claim did not arise until after the first proceeding was entirely complete.

The next question that comes is if abuse of the writ is not a bar, then is there any other procedural bar for this claim? We submit there is none.

The State has argued the question of delay. The only delay issue, however, which can be considered in Federal habeas corpus is the issue of delay described in Rule 95 of the Rules describing habeas proceedings under Section 2254. That Rule incorporates the traditional Latches rule from equity. And the critical factor there is that the State be able to show in order to have benefit of that Rule of delay, that the State be able to show that the delay has prejudiced its ability to defend on the merits of the issue presented. The State has made no suggestion that the short delay between October and May has prejudiced their ability to defend against the merits of this issue at all. So where does that leave us? That leaves us with no abuse, with no delay and with the State in the middle saying somehow this has to stop, these eve of execution applications have got to be put under wraps and done away with and you have to find either abuse or delay or some sort of equitable remedy barring the consideration of this issue. We submit there is none. There is abuse of the writ and there is delay. And those are the only two matters under the Federal habeas statute that can preclude the Court's ruling on the merits that is as Federal matter. Obviously there's procedural default, but that's not material to this issue.

So we submit that the Court has no option but to go to the merits, and I'd like to defer to one of my colleagues

THE COURT: Very well.

MR. GREENE: Thank you.

MS. SHEARER: With the Court's permission, we will divide our responses. Mrs. Brill will lead the argument on abuse of the writ.

THE COURT: Petitioner took 54 minutes. I assume the State will take no more than that.

Your name is what, ma'am?

MS. BRILL: My name is Penny Brill, Your Honor.

I'd like to start off with the abuse of the writ argument and I'm going to apply it to all the claims that were raised in this particular petition.

I think to start with let's look at the background of abuse of the writ. I think the Fifth Circuit opinion in Jones versus Estelle is a very well reasoned opinion. It gives the Court background on when abuse of the writ should be applied. Jones versus Estelle talks about abuse of the writ boils down to whether or not Petitioner can excuse his admission of claim from an earlier writ by proving he did not know of the new claims when the earlier writ was filed and we give examples when there has been a change in the law for development in the facts which was and I stress reasonably knowable before.

It is the State's position, and we are not disputing the facts presented by Petitioner here, that's

one reason why there is no reason to have evidentiary hearing on abuse of the writ. We are only disputing the interpretation of facts, and I don't think you need an evidentiary hearing for a dispute on the interpretation of facts.

I think also when you are talking about abuse of the writ, the Courts have recently added perhaps another element to abuse of the writ; that is the timing of the second petition. The Court in Autry versus Estelle as cited in the response and I think in Woodard versus Hutchins, Justice Powell talking for the majority of the United States Supreme Court said, and again it's important to know that Woodard versus Hutchins involved a claim of insanity again at the time of execution but there were new facts which had arisen from the time of trial to the time of execution which Mr. Woodard is now insane. Justice Powell said "This is another capital case in which a last minute application for stay of execution and new petition for habeas corpus relief has been filed with no explanation as to why the claims were not raised earlier or why they were not raised in one petition. It is another example of abuse of the writ." So I think from reading that you can read the interpretation that one of the factors to consider in whether or not there has been abuse of the writ is the timing of the second petition; and that is what the State is relying on.

I want to make it clear we are not arguing delay

as Petitioner has set out. Delay only insomuch as the timing of the second petition, not because we cannot respond on the merits.

I'd like to go over the facts just from the Defendant's own pleading in this particular case. This is quoting from Petitioner's petition itself:

"On December 5, 1981, Mr. Ford's health and normalcy began to give way." This is at Page 13 in the petition. "By February 28, 1982, Mr. Ford's" --

THE COURT: December 5th was the first day of hearing.

MS. BRILL: That's correct, Your Honor. That's why I'm quoting. I'm quoting from the Petitioner, from Counsel's own words; so we are not talking about disputive facts. These are his own words that are in his petition.

At Page 13 he says that "His health and normalcy began ti give way. Then by February 28, 1982, Mr. Ford's delusional system had taken a quantum leap." This is at Page 16. "By April 17, 1982, Petitioner showed some further advance in his delusional systems accompanied by the injection of paranoia into his delusions as well as the re-emergence of his loosening of associations. By July 8, 1982, Mr. Ford's remission ended." And he goes on later at Page 31, "By September 11, 1982, Mr. Ford's delusional system had become all-pervasive and all-encompassing. There

has been no remissions from the grip of the delusion, the loosening of associations and the hallucinations since then. Then on September 12, 1982, three new aspects to the delusion emerged." That is at Page 37. Then at Page 39 Petitioner alleged, "On October 22, 1982, Mr. Ford began to report yet another new development in his delusion, one that, over the course of the next year and beyond, would become the most significant element in his world of delusions -- the taking of hostages by the persons who were already tormenting him at Florida State Prison. Then by May 10th, 1983, Mr. Ford's delusions became increasingly grandiose, a new element entered the delusions. Then, in the last letter available from Mr. Ford on November 28, 1983, "Petitioner alleges at Page 53 of the Petition, "That Mr. Ford was still grandiose, but his delusional systems seem to have changed significantly in content. His form of communication was becoming quite esoteric and incoherent, as commonly occurs in severely psychotic individuals."

Thus, it is the State's position from Counsel's own words which are in the petition that there were facts which were available to his support in good faith assertion as to the Petitioner's mental capacity to be executed. This is long before October 20, 1983, when he invoked the procedures under 922.07.

I think it is important to remember the issue in

the case is not the issue of the Petitioner's competency in fact; but the issue is whether or not he is entitled to, procedurally entitled to judicial determination of competency as opposed to being forced to rely solely on the Governor's determination.

Now Counsel has not given any reason why he could not have brought forth back in, let's take from December, from the day when the Governor appointed the three psychiatrists who all found Mr. Ford competent to be executed, why he couldn't at that point, from December 1983 until he finally files some sort of petition in State Court on May 21, 1984, ten days before his execution, he could not have filed some sort of proceedings in State Court and then into the Federal Court asking that he should have judicial determination of his competency. This is never done until ten days before the execution.

THE COURT: December of '83 was when the examination was.

MS. BRILL: Yes. And I believe within a couple of weeks after that all three psychiatrists had reported that Mr. Ford was competent and understood the reasons that he was to be executed and reasons why he was to be executed. And from that point on Counsel never did anything to bring this issue to the attention of any Court in the State's system or in the Federal system until May 21, ten days before Mr.

Ford's scheduled execution.

Furthermore, I think it's important to note some additional history. After the Defendant initially filed his first habeas petition in this Court on December 2nd, 1981 and this Court denied the petition on December 7th entering your written order on December 10th, the case then progressed to the Eleventh Circuit, through the panel decision and the en banc decision which was rendered by the Eleventh Circuit on January 7, 1983; and in that order of January 7, 1983 there was an order for remand to remand this case back on the Barclay issue. Now at that time according to Petitioner's own statements Mr. Ford was suffering under some very heavy delusions at this point in January of 1983. Yet Counsel never asked the Eleventh Circuit in that remand can we add an additional claim as to his competency to be executed. He moved for a re-hearing in the Eleventh Circuit, I believe, on January 28th, but in that new motion for re-hearing of the en banc decision, he never asked for it, to have that, the remand to this Court, expanded to include other claims that have since arisen. And I think the facts certainly by then were available for Counsel to have done so. And especially I think that that idea of asking the Court or having this Court take jurisdiction over the new claims is supported by the Eleventh Circuit's recent decision in Thompson versus Wainwright which is at 714 F 2d 1495 and

Arango versus Wainwright, which I had cited in the response. In both those cases the Eleventh Circuit has held that the District Court has the authority to continue a case to allow petitioners to either amend the petition, file a second petition, consolidate them, and leaving that petition dormant on the district court docket while the Petitioner goes back to exhaust the State remedies. So he could have done that. But he didn't. Instead his claim is dormant, stays quiet until ten days before the execution.

I think the instruction in Goode versus Wainwright in the Eleventh Circuit is applicable here. In Goode the Court said that a showing of changed conditions does not mean that post-conviction insanity can be held back of an issue until the eve of execution and then raised for the first time. And again in Hutchings versus Woodard the Supreme Court stated that a pattern seems to be developing in capital cases of multiple review in which claims could have been presented years ago or brought forth or in piecemeal fashion only after the execution date is set or becomes imminent. Federal Courts should not continue to tolerate even in capital cases this type of abuse of the writ. And it is the State's position this Court should not either.

As to the argument on abuse of the writ as it applies to the erroneous jury instruction.

It is the State's position that, first off, that

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January 7, 1985

Honorable Spencer D. Mercer, Clerk
United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

Re: Alvin Bernard Ford v. Louie L. Wainwright
Case No. 84-5372

Dear Mr. Mercer:

I would like to make the court aware, pursuant to Federal Rule of Appellate Procedure 28 (j) of some additional authority which has a bearing on the issues raised in the above-referenced case regarding the adequacy of the Florida gubernatorial procedure for determining post-conviction sanity in capital cases.

In the case of Gary Eldon Alvord, the governor followed the procedure outlined in §922.07, Florida Statutes. The appointed commission of three psychiatrists, two of whom (Ivory and Mhatre) were commissioners in Ford's case, reported to the governor that Alvord was not mentally competent under the §922.07 standard. Pursuant to this report, the governor entered an order remanding Alvord to the Florida State Hospital for the insane. I have enclosed copies of the two Executive Orders, Nos. 84-214 and 84-222.

The reason I have brought this matter to the court's attention is to further support the argument, at pages 33-38 of the Brief for Respondent/Appellee, that

the gubernatorial proceeding is adequate to vindicate any constitutional right not to be insane when executed.

Sincerely,

JOY B. SHEARER
Assistant Attorney General
Counsel for Respondent/Appellee

gc

Enclosure

cc: Craig S. Barnard, Esq.
Laurin A. Wollan, Jr., Esq.

State of Florida

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 84-214

(Commission to Determine Mental Competency of Inmate)

WHEREAS, the Governor has been informed that GARY ELDON ALVORD, an inmate at Florida State Prison, under sentence of death, may be insane, and

WHEREAS, pursuant to Section 922.07, Florida Statutes, it is necessary to appoint a Commission of three competent, disinterested psychiatrists to inquire into the mental condition of the aforesaid inmate, and to suspend the execution of the death sentence imposed upon said inmate during the course of the medical examination;

NOW, THEREFORE, I, BOB GRAHAM, as Governor of the State of Florida, by virtue of the authority vested in me by the Constitution and Laws of the State of Florida, specifically Section 922.07, Florida Statutes, do hereby promulgate the following Executive Order, effective immediately:

1. The following persons, who are competent, disinterested psychiatrists, are hereby appointed as a Commission to examine the mental condition of GARY ELDON ALVORD, an inmate at Florida State Prison, pursuant to Section 922.07, Florida Statutes:

    1. Peter B.C.B. Ivory, M.D.
    2. Gilbert N. Ferris, M.D.
    3. Dr. Umesh M. Mhatre

2. The above-named psychiatrists as and constituting the "Commission to Determine the Mental Condition of GARY ELDON ALVORD" shall examine GARY ELDON ALVORD to determine whether he understands the nature and effect of the death penalty and why it is to be imposed upon him as required by Section 922.07. The examination shall take place with all three psychiatrists present at the same time. Counsel for the inmate and the State Attorney may be present but shall not participate in the examination in any adversarial manner.

3. The psychiatric examination shall be conducted expeditiously. Upon completion of the examination, said Commission shall report to me their findings.

4. The expenses involved in this examination shall be borne by the Department of Corrections.

5. The execution of the sentence imposed upon GARY ELDON ALVORD by the Circuit Court of the 13th Judicial Circuit, Hillsborough County, on April 9, 1974, is hereby suspended pending the outcome of the examination of the mental condition of said inmate.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 20th day of November, 1984.

GOVERNOR

ATTEST:

SECRETARY OF STATE

State of Florida

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 84-222

(Amendment of Executive Order 84-214)

WHEREAS, in accordance with the provisions of Section 922.07, Florida Statutes, Executive Order 84-214 was entered appointing three competent, disinterested psychiatrists (the "Commission") to examine the mental condition of GARY ELDON ALVORD, an inmate at Florida State Prison under sentence of death, and

WHEREAS, the Commission has completed its examination of the said GARY ELDON ALVORD, and, in reviewing its report the Governor has determined that GARY ELDON ALVORD is not mentally competent under the terms of Section 922.07, and

WHEREAS, Section 922.07 requires that an inmate under sentence of death found to be incompetent must be committed to the state hospital for the insane until such time as the inmate is found to be competent, and

WHEREAS, there is no reason for the continuation of the Commission since the purpose for which it was created has been completed; and in accordance with Section 922.07, Florida Statutes,

NOW, THEREFORE, I, BOB GRAHAM, as Governor of the State of Florida, by virtue of the authority vested in me by the Constitution and laws of the State of Florida, do hereby promulgate the following executive order:

1. GARY ELDON ALVORD is remanded to the Florida State Hospital for the insane at Chattahoochee where he shall be kept in secure custody.

2. Peter Ivory, M.D., Gilbert Ferris, M.D., and Umesh Mhatre, M.D., are hereby relieved of all further duties and responsibilities under Executive Order 84-214.

3. The stay of execution of the sentence imposed upon GARY ELDON ALVORD, granted by said Executive Order 84-214, remains in effect until further order pursuant to Section 922.07.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 29th day of November, 1984.

GOVERNOR

ATTEST:

SECRETARY OF STATE